

§ 105-113.4E. Modified risk tobacco products.

(a) Definition. – The term "modified risk tobacco product" means a tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

(b) Tax Rate Reduction. – The tax imposed under this Article is reduced by the following:

- (1) Fifty percent (50%) for a modified risk tobacco product issued a risk modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(1).
- (2) Twenty-five percent (25%) for a modified risk tobacco product issued an exposure modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(2).

(c) Substantiation. – Generally, tobacco products are subject to the tax imposed under this Article, unless a taxpayer substantiates that a product qualifies as a modified risk tobacco product and is subject to a reduced rate of tax in accordance with subsection (b) of this section. A taxpayer may substantiate that a product qualifies as a modified risk tobacco product by providing the Department a copy of the order issued by the United States Food and Drug Administration verifying the product as a modified risk tobacco product. Once the taxpayer provides the order to the Department, the Department must reduce the tax due as required under subsection (b) of this section effective on the first day of the next calendar month. If the order indicating a product qualifies as a modified risk tobacco product is renewed, the order renewing the product must be provided to the Department within 14 days of receipt.

If the product no longer qualifies as a modified risk tobacco product, the rate reduction under subsection (b) of this section is forfeited. A product no longer qualifies when the order qualifying the product as a modified risk tobacco product expires and is not renewed or the order is withdrawn by the United States Food and Drug Administration. The taxpayer must provide notice of such expiration or withdrawal to the Department within 14 days of receipt. Upon determination by the Department that the product no longer qualifies as a modified risk tobacco product, the Department must determine if the taxpayer paid a reduced rate after the order expired or was withdrawn. If the taxpayer did avoid taxes, the taxpayer is liable for all past taxes avoided as a result of the product no longer qualifying plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the rate reduction had not been allowed. The past taxes and interest are due 30 days after the date the rate reduction is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (2018-5, s. 38.7(a).)